

Response to Pebble Limited Partnership's (PLP's) Talking Points

Background on the Bristol Bay watershed.

The Bristol Bay watershed contains substantial biological and geological resources. Bristol Bay produces almost half of the world's sockeye salmon. One sub-watershed is the world's largest producer of sockeye salmon. Another is frequently at or near the world's largest producer of Chinook salmon. These fisheries support 14,000 jobs and generate \$480 million annually in direct economic expenditures and sales. Alaska Natives have also relied on these fisheries for subsistence for over 4,000 years.

The geological resources in the watershed are also significant. There are several deposits in the watershed, one of which is the Pebble deposit. The Pebble deposit is a large low-grade ore with copper, gold, and molybdenum. Development of this deposit could result in the largest mine of its type in North America. Development could also generate between \$300 billion and \$500 billion in revenue over the life of mine. These figures, which have not been updated since 2011 when copper prices were higher than they are currently, do not include the costs of development, including costs to build the roads, transmission network, power plant, mine sites, milling and refining operations, wages etc. Given the investment necessary for development, there is uncertainty about whether the mine is economically viable. If the mine is developed, it could provide more than 2,000 jobs during mine construction and more than 1,000 jobs during mine operation.

EPA has worked with Northern Dynasty Minerals (NDM)/PLP for over a decade.

EPA has been involved with potential large-scale mining in the Bristol Bay watershed for over a decade, working with all stakeholders in the region, including the mining companies that have explored developing the Pebble deposit.

- In 2001, Northern Dynasty Minerals, a Canadian mining company, started conducting exploration of the Pebble deposit.
- As early as 2003, EPA met with NDM several times to talk about NDM's plan to develop the Pebble mine, the need for a 404 permit, and the need to develop environmental baseline data.
- In 2004, NDM formally began the pre-NEPA process and established working groups with other federal and state agencies. EPA worked with NDM at this time, in anticipation that NDM would submit a permit application to the Corps and enter the National Environmental Policy Act (NEPA) process.
- Between this time and 2010, when PLP¹ ended the working groups, EPA demonstrated a commitment to this process. EPA established its own team that worked with NDM and then PLP. EPA's goal was to ensure that good environmental data would be developed for the NEPA process, which would hopefully result in good decision making. During this time, NDM/PLP consistently promised, and has always been able to, file a Section 404 permit application with the Corps. To date, PLP has not done so. According to Senator Lisa Murkowski, this has created a climate of "anxiety, frustration, and confusion" in Bristol Bay for over a decade.

EPA did not grant the tribal petitions and instead decided to conduct an ecological risk assessment.

¹ In 2007, PLP was formed as a joint partnership between NDM and Anglo American (Anglo American withdrew in 2013).

In 2010, EPA received a petition from nine federally recognized tribes, asking EPA to initiate its section 404(c) authority in the watershed to protect the salmon fishery that the tribes depend upon. That request was followed by others from numerous groups, including the commercial fishing industry, the sport fishing industry, faith-based groups, Tiffany's and others. EPA also received requests from four federally recognized tribal governments, the then governor of Alaska, and PLP, asking EPA to refrain from using section 404(c).

After months of deliberation and communications with groups on both sides of the debate, Region 10 decided not to grant either of the two competing sets of petitions. Region 10 instead decided to gather additional information by conducting a scientific study pursuant to Section 104 of the Clean Water Act.

The Bristol Bay Watershed Assessment.

EPA initiated a scientific ecological risk assessment in 2011 to study the watershed and inform future decision-making. What followed was a three-year scientific process that included two external review drafts, multiple rounds of public comment, and external peer review. In total, EPA received over one million comments on the Assessment (>20,000 unique). All of the external peer reviewers thought that the second external review draft of the Assessment was responsive to their comments and suggestions on the first external review draft. The public comments were also generally supportive of the second draft of the Assessment.

In 2011, NDM submitted mine plans to the U.S. Securities and Exchange Commission (SEC) that detailed its intention to develop a large-scale mine. EPA used these mine plans to develop mine scenarios for the Assessment. Under the largest of the scenarios evaluated, mining the Pebble deposit may involve excavation of a pit up to one mile deep and over 2.5 miles wide. The mining operation could cover an area larger than Manhattan. Depending upon the size of the mine, between 24 and 94 miles of salmon-supporting streams would be destroyed. In addition, between 1,300 and 5,350 acres of wetlands, ponds, and lakes would be destroyed. Finally, between 9 and 33 miles of salmon-supporting streams would experience altered streamflow that is likely to affect ecosystem structure and function.

The largest scenario that evaluated would include three tailing storage facilities and a total of eight dams. At least one dam would be 685 feet high. At this height, the tailings dam would be higher than the Washington Monument. The tailings storage facilities and dams are likely to be in place for hundreds to thousands of years, long beyond the life of the mine. In addition, routine operations and accidents would increase impacts on salmon habitat quality, both at the mining site and along the 86-mile transportation corridor.

EPA's Section 404(c) regulatory response.

After the Assessment was finalized in January of 2014, EPA considered the available information, including the Assessment, and the Regional Administrator for Region 10 initiated a Section 404(c) process. The Region chose not to "prohibit" or "deny" any discharges. This is not a proposed "veto" action. Instead, the Proposed Determination proposes various thresholds that would restrict the extent of aquatic resources that could be filled or altered as a result of activities to mine the Pebble Deposit. If these restrictions are finalized, proposals to mine the Pebble deposit that have impacts below each of these restrictions could proceed to the Section 404 permitting process with the Corps. This would provide upfront certainty to potential large-scale mining developers.

The restrictions are based on the worldwide median size porphyry copper deposit. These restrictions are

conservative for this mine size because the analysis of potential adverse effects did not include impacts associated with all of the components necessary to construct and operate such a mine – like a transportation corridor – or potential accidents and failures.

If the restrictions were finalized, the total loss of streams allowable equate to a length of more than 350 football fields and the total loss of wetlands allowable equate to an area of more than 900 football fields. Losses of this nature and magnitude would be unprecedented for the Clean Water Act Section 404 regulatory program in the Bristol Bay region, as well as the rest of Alaska, and perhaps the nation.

EPA acted without predecision or bias.

In 2014, PLP, and others, filed complaints with the Office of Inspector General (OIG), which is an independent review body within EPA. The OIG responded by conducting an independent, 17-month investigation that included a review of EPA’s guidance, policies, procedures, briefing materials, interviews with EPA employees and officials, and a review of over 8,000 emails and external correspondence. The OIG concluded that the Agency acted without bias or predetermination when it conducted the Assessment and initiated the Section 404(c) proceeding. It also found that EPA followed all assessment policies and procedures. There was one personnel issue that the OIG noted, but it did not affect the OIG’s main findings, and EPA has complied with the OIG’s recommendations on that point.

In contrast, the Cohen Group’s report was not neutral, independent, or thorough. The Cohen Group’s review was commissioned by and funded by PLP. Moreover, by its own admission, the review only included a subset of documentation regarding the EPA’s actions in the Bristol Bay watershed.

Ex. 5 - Attorney Work Product